

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \*

GREGORY ROBERT WILSON,

Case No. 3:22-cv-00231-CLB

Plaintiff,

**ORDER DENYING MOTION TO  
REMAND AND GRANTING CROSS-  
MOTION TO AFFIRM**

KILOLO KIJAKAZI,<sup>1</sup>  
Acting Commissioner of Social Security,

[ECF Nos. 17, 18]

Defendant.

This case involves the judicial review of an administrative action by the Commissioner of Social Security (“Commissioner”) denying Gregory Robert Wilson’s (“Wilson”) application for disability insurance benefits and supplemental security income pursuant to Titles II and XVI of the Social Security Act. Currently pending before the Court is Wilson’s motion for reversal and remand. (ECF No. 17.) The Commissioner filed a response and cross-motion to affirm, (ECF Nos. 18, 19)<sup>2</sup>, and Wilson filed a reply, (ECF No. 20). Having reviewed the pleadings, transcripts, and the Administrative Record (“AR”), (ECF No. 13), the Court concludes that the Commissioner’s finding that Wilson could perform other work that exists in significant numbers in the national economy was supported by substantial evidence. Therefore, the Court denies Wilson’s motion for remand, (ECF No. 17), and grants the Commissioner’s cross-motion to affirm, (ECF No. 18).

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<sup>1</sup> Kilolo Kijakazi is now the Acting Commissioner of Social Security and is automatically substituted as a party pursuant to Fed. R. Civ. P. 25(d).

<sup>2</sup> ECF Nos. 18 and 19 are identical documents.

1       **I. STANDARDS OF REVIEW**

2       **A. Judicial Standard of Review**

3       This Court's review of administrative decisions in social security disability benefits  
 4       cases is governed by 42 U.S.C. § 405(g). See *Akopyan v. Barnhart*, 296 F.3d 852, 854  
 5       (9th Cir. 2002). Section 405(g) provides that “[a]ny individual, after any final decision of  
 6       the Commissioner of Social Security made after a hearing to which he was a party,  
 7       irrespective of the amount in controversy, may obtain a review of such decision by a civil  
 8       action . . . brought in the district court of the United States for the judicial district in which  
 9       the plaintiff resides.” The court may enter, “upon the pleadings and transcript of the record,  
 10       a judgment affirming, modifying, or reversing the decision of the Commissioner of Social  
 11       Security, with or without remanding the cause for a rehearing.” *Id.*

12       The court must affirm an Administrative Law Judge's (“ALJ”) determination if it is  
 13       based on proper legal standards and the findings are supported by substantial evidence  
 14       in the record. *Stout v. Comm'r Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir. 2006); see  
 15       also 42 U.S.C. § 405(g) (“findings of the Commissioner of Social Security as to any fact,  
 16       if supported by substantial evidence, shall be conclusive”). “Substantial evidence is more  
 17       than a mere scintilla but less than a preponderance.” *Bayliss v. Barnhart*, 427 F.3d 1211,  
 18       1214 n.1 (9th Cir. 2005) (internal quotation marks and citation omitted). “It means such  
 19       relevant evidence as a reasonable mind might accept as adequate to support a  
 20       conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated*  
 21       *Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)); see also *Webb v. Barnhart*, 433 F.3d  
 22       683, 686 (9th Cir. 2005).

23       To determine whether substantial evidence exists, the court must look at the  
 24       administrative record as a whole, weighing both the evidence that supports and  
 25       undermines the ALJ's decision. *Orteza v. Shalala*, 50 F.3d 748, 749 (9th Cir. 1995)  
 26       (citation omitted). Under the substantial evidence test, a court must uphold the  
 27       Commissioner's findings if they are supported by inferences reasonably drawn from the  
 28       record. *Batson v. Comm'r, Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004).

1     “However, if evidence is susceptible of more than one rational interpretation, the decision  
2     of the ALJ must be upheld.” *Orteza*, 50 F.3d at 749 (citation omitted). The ALJ alone is  
3     responsible for determining credibility and for resolving ambiguities. *Meanel v. Apfel*, 172  
4     F.3d 1111, 1113 (9th Cir. 1999).

5           It is incumbent on the ALJ to make specific findings so that the court does not  
6     speculate as to the basis of the findings when determining if substantial evidence supports  
7     the Commissioner’s decision. The ALJ’s findings should be as comprehensive and  
8     analytical as feasible and, where appropriate, should include a statement of subordinate  
9     factual foundations on which the ultimate factual conclusions are based, so that a  
10    reviewing court may know the basis for the decision. See *Gonzalez v. Sullivan*, 914 F.2d  
11    1197, 1200 (9th Cir. 1990).

12           **B. Standards Applicable to Disability Evaluation Process**

13           The individual seeking disability benefits bears the initial burden of proving  
14     disability. *Roberts v. Shalala*, 66 F.3d 179, 182 (9th Cir. 1995). To meet this burden, the  
15     individual must demonstrate the “inability to engage in any substantial gainful activity by  
16     reason of any medically determinable physical or mental impairment which can be  
17     expected . . . to last for a continuous period of not less than 12 months.” 42 U.S.C. §  
18     423(d)(1)(A). More specifically, the individual must provide “specific medical evidence” in  
19     support of their claim for disability. See 20 C.F.R. § 404.1514. If the individual establishes  
20     an inability to perform their prior work, then the burden shifts to the Commissioner to show  
21     that the individual can perform other substantial gainful work that exists in the national  
22     economy. *Reddick v. Chater*, 157 F.3d 715, 721 (9th Cir. 1998).

23           The first step requires the ALJ to determine whether the individual is currently  
24     engaging in substantial gainful activity (“SGA”). 20 C.F.R. §§ 404.1520(b), 416.920(b).  
25     SGA is defined as work activity that is both substantial and gainful; it involves doing  
26     significant physical or mental activities, usually for pay or profit. 20 C.F.R. §§ 404.1572(a)-  
27     (b), 416.972(a)-(b). If the individual is currently engaging in SGA, then a finding of not  
28     disabled is made. If the individual is not engaging in SGA, then the analysis proceeds to

1 the second step.

2       The second step addresses whether the individual has a medically determinable  
3 impairment that is severe or a combination of impairments that significantly limits the  
4 individual from performing basic work activities. 20 C.F.R. §§ 404.1520(c), 416.920(c). An  
5 impairment or combination of impairments is not severe when medical and other evidence  
6 establish only a slight abnormality or a combination of slight abnormalities that would have  
7 no more than a minimal effect on the individual's ability to work. 20 C.F.R. §§ 404.1521,  
8 416.921; Social Security Rulings ("SSRs") 85-28 and 96-3p. If the individual does not have  
9 a severe medically determinable impairment or combination of impairments, then a finding  
10 of not disabled is made. If the individual has a severe medically determinable impairment  
11 or combination of impairments, then the analysis proceeds to the third step.

12       The third step requires the ALJ to determine whether the individual's impairment or  
13 combination of impairments meets or medically equals the criteria of an impairment listed  
14 in 20 C.F.R. Part 404, Subpart P, Appendix 1. 20 C.F.R. §§ 404.1520(d), 404.1525,  
15 404.1526, 416.920(d), 416.925, 416.926. If the individual's impairment or combination of  
16 impairments meets or equals the criteria of a listing and meets the duration requirement  
17 (20 C.F.R. §§ 404.1509, 416.909), then a finding of disabled is made. 20 C.F.R. §§  
18 404.1520(h), 416.920(h). If the individual's impairment or combination of impairments  
19 does not meet or equal the criteria of a listing or meet the duration requirement, then the  
20 analysis proceeds to the next step.

21       Prior to considering step four, the ALJ must first determine the individual's residual  
22 functional capacity ("RFC"). 20 C.F.R. §§ 404.1520(e), 416.920(e). The RFC is a function-  
23 by-function assessment of the individual's ability to do physical and mental work-related  
24 activities on a sustained basis despite limitations from impairments. SSR 96-8p. In making  
25 this finding, the ALJ must consider all of the symptoms, including pain, and the extent to  
26 which the symptoms can reasonably be accepted as consistent with the objective medical  
27 evidence and other evidence. 20 C.F.R. §§ 404.1529 and 416.929; SSRs 96-4p, 96-7p.  
28 To the extent that objective medical evidence does not substantiate statements about the

1 intensity, persistence, or functionally-limiting effects of pain or other symptoms, the ALJ  
2 must make a finding on the credibility of the individual's statements based on a  
3 consideration of the entire case record. The ALJ must also consider opinion evidence in  
4 accordance with the requirements of 20 C.F.R. §§ 404.1527 and 416.927 and SSRs 96-  
5 2p, 96-5p, 96-6p, and 06-3p.

6 After making the RFC determination, the ALJ must then turn to step four to  
7 determine whether the individual has the RFC to perform their past relevant work. 20  
8 C.F.R. §§ 404.1520(f), 416.920(f). Past relevant work means work performed either as the  
9 individual actually performed it or as it is generally performed in the national economy  
10 within the last 15 years or 15 years prior to the date that disability must be established. In  
11 addition, the work must have lasted long enough for the individual to learn the job and  
12 performed at SGA. 20 C.F.R. §§ 404.1560(b), 404.1565, 416.960(b), 416.965. If the  
13 individual has the RFC to perform their past work, then a finding of not disabled is made.  
14 If the individual is unable to perform any past relevant work or does not have any past  
15 relevant work, then the analysis proceeds to the fifth and final step.

16 The fifth and final step requires the ALJ to determine whether the individual is able  
17 to do any other work considering their RFC, age, education, and work experience. 20  
18 C.F.R. §§ 404.1520(g), 416.920(g). If the individual is able to do other work, then a finding  
19 of not disabled is made. Although the individual generally continues to bear the burden of  
20 proving disability at this step, a limited evidentiary burden shifts to the Commissioner. The  
21 Commissioner is responsible for providing evidence that demonstrates that other work  
22 exists in significant numbers in the national economy that the individual can do. *Lockwood*  
23 v. *Comm'r, Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010).

## 24 II. CASE BACKGROUND

### 25 A. Procedural History

26 Wilson applied for disability insurance benefits ("DIB") and supplemental security  
27 income ("SSI") on December 2, 2019, with an alleged disability onset date of January 1,  
28 2018. (AR 29, 356-59.) Wilson's application was denied initially on May 15, 2020, and

1 upon reconsideration on July 21, 2020. (AR 114, 129, 142, 155.) Wilson subsequently  
2 requested an administrative hearing and on November 15, 2021 and December 21, 2021,  
3 Wilson and his attorney appeared at a telephonic hearing before an ALJ. (AR 62-99.) A  
4 vocational expert (“VE”) also appeared at the hearing via telephone. (*Id.*) The ALJ issued  
5 a written decision on January 7, 2022, finding that Wilson was not disabled because he  
6 could perform other work that exists in significant numbers in the national economy. (AR  
7 29-53.) Wilson appealed, and the Appeals Council denied review. (AR 1-5.) Accordingly,  
8 the ALJ’s decision became the final decision of the Commissioner. Having exhausted all  
9 administrative remedies, Wilson filed a complaint for judicial review on May 23, 2022. (See  
10 ECF Nos. 1-1, 7.)

11 **B. ALJ’s Decision**

12 In the written decision, the ALJ followed the five-step sequential evaluation process  
13 set forth in 20 C.F.R. §§ 404.1520 and 416.920. (AR 32-53.) Ultimately, the ALJ disagreed  
14 that Wilson has been disabled from January 1, 2018, the alleged onset date, through the  
15 date of his decision. (AR 53.) The ALJ held that, based on Wilson’s RFC, age, education,  
16 and work experience, Wilson could perform other work that exists in significant numbers  
17 in the national economy. (AR 52-53.)

18 In making this determination, the ALJ started at step one. Here, the ALJ found  
19 Wilson had not engaged in substantial gainful activity since the alleged onset date of  
20 January 1, 2018. (AR 35.) At step two, the ALJ found Wilson had the following severe  
21 impairments: degenerative disc disease of the lumbar spine with resultant foraminal  
22 stenosis and radiculopathy, status post laminotomy (L5-S1) and disc bulge (L4-5) and  
23 status post anterior lumbar L5-S1 interbody fusion with internal fixation; and dysfunction  
24 of major joint(s), specifically right shoulder (status post-surgery for torn labrum), right ankle  
25 tendinitis (status post-surgery), and left knee (status post-surgery). (AR 35-37.) At step  
26 three, the ALJ found Wilson did not have an impairment or combination of impairments  
27 that either met or medically equaled the severity of those impairments listed in 20 C.F.R.  
28 Part 404, Subpart P, Appx. 1; 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526, 416.920(d),

1 416.925, and 416.926. (AR 37.)

2 Next, the ALJ determined Wilson has the RFC to perform sedentary work as  
3 defined by 20 C.F.R. §§ 404.1567(a) and 416.967(a) except:

4 lifting and carrying 10 pounds or less; standing and walking for a maximum  
5 of two hours in an eight-hour workday; sitting for six hours in an eight-hour  
6 workday; occasionally climbing stairs and ramps; never climbing ladders or  
7 scaffolds; occasional balancing, stooping, kneeling, and crouching; never  
8 crawling; occasional pushing/pulling with the right arm; occasional above  
9 shoulder reaching with the right arm; avoid concentrated exposure to  
10 extreme cold and heat and vibration; avoid all exposure to moving  
mechanical parts and unprotected heights; needs to work in reasonable  
proximity to a restroom, meaning within a 10-minute walk or less; needs a  
cane to ambulate; and needs a sit/stand option at will for up to three minutes  
every two hours as needed.

11 (AR 37.)

12 The ALJ found Wilson's medically determinable impairments could reasonably be  
13 expected to cause the symptoms alleged; however, Wilson's statements concerning the  
14 intensity, persistence, and limiting effects of those symptoms were not entirely consistent  
15 with the medical evidence and other evidence in the record. (AR 40.) In reaching this  
16 conclusion, the ALJ reviewed and discussed the objective medical evidence, Wilson's  
17 longitudinal treatment history, his reported activities, inconsistent statements regarding  
18 the nature and extent of his alleged symptoms, and the prior administrative findings of the  
19 State Agency consultants. (AR 37-51.) The ALJ then determined that Wilson is not capable  
20 of performing past relevant work, as an HVAC technician, as actually or generally  
21 performed. (AR 51.)

22 Relying on the testimony of the VE, the ALJ determined that Wilson's age,  
23 education, work experience, and RFC would allow him to perform other occupations  
24 existing in significant numbers in the national economy, such as: order clerk (food and  
beverage), laminator, and document preparer. (AR 52-53.) Accordingly, the ALJ held that  
25 Wilson had not been under a disability since the alleged onset date of January 1, 2018,  
26 through the date of the decision, and denied Wilson's claim. (AR 53.)

27 ///

1       **III. ISSUE**

2           Wilson seeks judicial review of the Commissioner's final decision denying DIB and  
3       SSI under Titles II and XVI of the Social Security Act. (ECF No. 17.) Wilson raises a single  
4       issue for this Court's review: Whether the ALJ properly evaluated the medical opinion  
5       evidence in determining Wilson's RFC. (*Id.* at 16-24.)

6       **IV. DISCUSSION**

7           Within the administrative record, an ALJ may encounter medical opinions from  
8       three types of physicians: treating, examining, and non-examining. *See Valentine v.*  
9       *Comm'r of Soc. Sec. Admin.*, 574 F.3d 685, 692 (9th Cir. 2009). For claims filed *on or after*  
10      March 27, 2017, no deference or specific evidentiary weight, including controlling weight,  
11      will be given to any medical opinions or prior administrative medical findings, including  
12      those from a plaintiff's medical sources. 20 C.F.R. §§ 404.1520c(a), 416.920c(a). When  
13      evaluating the persuasiveness of medical opinions and prior administrative medical  
14      findings, the most important factors considered are *supportability* and *consistency*. *Id.*  
15      (emphasis added). When a finding is made on persuasiveness, there must be an  
16      explanation of how the ALJ considered the supportability and consistency factors for a  
17      medical source's medical opinions or prior administrative medical findings within the  
18      determination or decision. *Id.*; *see also* 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2).

19           The more relevant the objective medical evidence and supporting explanations  
20      presented by a medical source are to support their medical opinions or prior administrative  
21      medical findings, the more persuasive the medical opinions or prior administrative medical  
22      findings will be. *Id.* at §§ 404.1520c(c)(1), 416.920c(c)(1). The more consistent a medical  
23      opinion or prior administrative medical finding is with the evidence from other medical  
24      sources and nonmedical sources in the claim, the more persuasive the medical opinion or  
25      prior administrative medical finding will be. *Id.* at §§ 404.1520c(c)(2), 416.920c(c)(2).

26           The ALJ will consider the following additional factors when evaluating the  
27      persuasiveness of medical opinions and prior administrative medical findings, however,  
28      the ALJ is not required to explain how the factors were considered:

1 (1) relationship of the claimant with the medical source:

2 (i) length of the treatment relationship,  
 3 (ii) frequency of examinations,  
 3 (iii) purpose of the treatment relationship,  
 4 (iv) extent of the treatment relationship, and  
 4 (v) examining relationship;

5 (2) specialization of the medical source providing the opinions or findings;  
 6 and

7 (3) other factors that tend to support or contradict a medical opinion or prior  
 7 administrative medical finding.

8 *Id.* at §§ 404.1520c(c)(3)-(5), 416.920c(c)(3)-(5).

9 When an ALJ finds two or more equally persuasive medical opinions or prior  
 10 administrative medical findings about the same issue that are equally well-supported and  
 11 consistent with the record, but are not exactly the same, then the ALJ must articulate,  
 12 within the claimant's determination or decision, how the ALJ considered the other most  
 13 persuasive factors for those medical opinions or prior administrative medical findings. *Id.*  
 14 at §§ 404.1520c(b)(3), 416.920c(b)(3).

15 Wilson filed his claims for DIB and SSI on December 2, 2019. (AR 29, 356-59.) For  
 16 this reason, the ALJ was required to follow 20 C.F.R. §§ 404.1520c and 416.920c when  
 17 considering and articulating how the ALJ considered medical opinions or prior  
 18 administrative medical findings. To evaluate whether the ALJ properly assessed Wilson's  
 19 physical limitations in determining his RFC, the Court will look for whether the ALJ applied  
 20 the proper legal standards under 20 C.F.R. §§ 404.1520c and 416.920c and, whether  
 21 there was substantial evidence in the record to support the ALJ's decision.

22 **A. There is Substantial Evidence in the Record to Support the ALJ's  
 23 Decision regarding Wilson's RFC**

24 Wilson first argues the ALJ erred when determining Wilson's RFC because he failed  
 25 to properly weigh the opinion of treating medical source Ronald Burnett. (ECF No. 17 at  
 26 16-22.) In response, the Commissioner states that although Wilson disagrees with the  
 27 ALJ's conclusion, his mere disagreement is not a basis to overturn the ALJ's decision in  
 28 this case and at best, Wilson's arguments present a competing interpretation of the record,

1 which does not constitute reversible error. (ECF No. 21 at 5 (citing *Shaibi v. Berryhill*, 883  
2 F.3d 1102, 1108 (9th Cir. 2018)).)

3 As an initial matter, the Court finds the ALJ applied the proper legal standards under  
4 20 C.F.R. §§ 404.1520c and 416.920c, as he appropriately assessed the supportability  
5 and consistency of Burnett's opinion as the regulations dictate, including providing an  
6 explanation of how the supportability and consistency factors were considered when  
7 assessing Burnett's medical opinions.

8 As to Wilson's physical limitations, the ALJ specifically found that Wilson had the  
9 ability to perform sedentary work except:

10 lifting and carrying 10 pounds or less; standing and walking for a maximum  
11 of two hours in an eight-hour workday; sitting for six hours in an eight-hour  
12 workday; occasionally climbing stairs and ramps; never climbing ladders or  
13 scaffolds; occasional balancing, stooping, kneeling, and crouching; never  
14 crawling; occasional pushing/pulling with the right arm; occasional above  
15 shoulder reaching with the right arm; avoid concentrated exposure to  
16 extreme cold and heat and vibration; avoid all exposure to moving  
mechanical parts and unprotected heights; needs to work in reasonable  
proximity to a restroom, meaning within a 10-minute walk or less; needs a  
cane to ambulate; and needs a sit/stand option at will for up to three minutes  
every two hours as needed.

17 (AR 37.) In considering the opinion of Burnett, the ALJ concluded that Burnett's opinion,  
18 to the extent it was inconsistent with the RFC assessment, was neither persuasive nor  
19 consistent with the longitudinal record. (AR 50.) Specifically, the ALJ found as follows:

20 the contemporaneous progress notes show the claimant consistently  
21 demonstrated a non-antalgic gait, normal 5/5 muscle strength, the ability to  
walk on heels and toes, adequate range of motion of the lumbosacral  
22 spine/hips, etc., until a one-time examination performed for the purpose of  
completing disability paperwork. The more recent imaging studies of the  
23 lumbar spine and right shoulder contradict the extent of limitations given by  
Nurse Burnett. Significantly, Nurse Burnett noted the claimant demonstrated  
24 good bilateral hand strength and no dysfunction in fine dexterity, which  
contradicts any significant shoulder problem(s) and contradicts the  
claimant's testimony about problems using his hands. Nurse Burnett noted  
25 the claimant was prescribed medications for his symptoms but failed to  
indicate the response to that treatment modality and whether other treatment  
26 modalities were attempted. For example, in the past, the claimant had shown  
27 a good response to physical therapy. As discussed above, the longitudinal  
28 progress notes from Nurse Burnett show the claimant responded relatively

1 well to a regimen of oral pain medications with symptom improvement after  
2 the one-time examination for the purpose of completing disability paperwork.  
3 Nurse Burnett subsequently saw the claimant every two months to refill  
4 prescriptions. Such a treatment history contradicts disabling symptoms. The  
5 claimant also testified to symptom improvement after left knee surgery.  
6 Nurse Burnett reported he started treating the claimant on September 14,  
7 2020, but he opined that the limitations given relate back to January 18,  
8 2018, almost three years earlier.

9 (AR 50-51.)

10 In determining Wilson's RFC, the ALJ provided a thorough review of the record  
11 including medical evidence and subjective testimony regarding Wilson's physical  
12 impairments, noting evidence that supported limitations and evidence that contradicted  
13 disabling allegations. (AR 37-51.) As noted above, the ALJ provided a thorough review of  
14 the evidence throughout the record that supported his RFC determination and specifically  
15 noted the supportability and consistency of Burnett's opinion. (*Id.*) Additionally, the ALJ  
16 did not provide conclusory reasons for rejecting Burnett's opinion, but rather the ALJ  
17 provided a thorough explanation of the inconsistency of Burnett's opinion to the remainder  
18 of the evidence and provided specific reasons for finding this opinion inconsistent.

19 In sum, the ALJ properly considered all the relevant evidence in determining  
20 Wilson's physical limitations, including complete assessments of the opinion of Burnett  
21 following the criteria articulated in the regulations. (*Id.*) The ALJ reasonably found Burnett's  
22 opinion to be neither persuasive nor consistent with the longitudinal record. (AR 50.) The  
23 ALJ's thorough evaluation of the supportability and consistency of these opinions supports  
24 the ALJ's conclusions as to Wilson's RFC.

25 Next, Wilson argues that the RFC determination is not supported by substantial  
26 evidence as the ALJ relied on the stale opinions of the State Agency medical consultants,  
27 resulting in the insertion of the ALJ's own lay medical opinion. (ECF No. 17 at 22-24.) The  
28 Commissioner argues the ALJ properly relied on the state agency consultant's medical  
opinions and Wilson failed to show that there was additional evidence relevant to his case  
which could have changed their assessments. (ECF No. 18 at 10-12.)

“An ALJ's duty to develop the record further is triggered only when there is

1 ambiguous evidence or when the record is inadequate to allow for proper evaluation of  
2 the evidence." *Mayes v. Massanari*, 276 F.3d 453, 459–60 (9th Cir. 2001). The duty to  
3 develop the record is not triggered when the ALJ has years of health records and multiple  
4 opinions from medical experts. *Ford*, 950 F.3d at 1156 ("Given that the ALJ had years of  
5 Ford's mental health records and multiple opinions from non-examining psychiatrists to  
6 inform her decision, this duty [to develop the record] was not triggered.") Additionally, the  
7 length of time between the state agency consultants' reports and the time of the ALJ's  
8 decision does not impact the ability of the ALJ to rely on those reports. See *Meadows v.*  
9 *Saul*, 807 F. App'x 643, 647 (9th Cir. 2020) (unpublished) ("There is always some time  
10 lapse between a consultant's report and the ALJ hearing and decision, and the Social  
11 Security regulations impose no limit on such a gap in time."). Here, the presence of  
12 evidence in the record spanning years from multiple sources means that the duty to  
13 develop the record is not triggered. *Ford*, 950 F.3d at 1156. Therefore, the inquiry turns to  
14 whether the ALJ's decision is supported by substantial evidence.

15 There is substantial evidence in the record to support the ALJ's RFC determination.  
16 The ALJ considered evidence in the record from many years, including evidence that  
17 entered the record after the state agency consultants reviewed the record. (AR 38-51; see  
18 *Tommasetti v Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008) (citation omitted) (a court "may  
19 not engage in second-guessing" where substantial evidence supports the ALJ's  
20 reasoning); see also *Biestek v. Berryhill*, 139 S.Ct. 1148, 1154 (2019) (substantial  
21 evidence is "not [a] high" threshold and means only "relevant evidence as a reasonable  
22 mind might accept as adequate to support a conclusion").)

23 Ninth Circuit precedent holds that an ALJ is responsible for translating and  
24 incorporating clinical findings into a succinct RFC and may properly reject an opinion  
25 "when it lacks support from objective medical findings or relies upon properly discounted  
26 subjective reports of a claimant." *Rounds v. Comm'r of SSA*, 807 F.3d 996, 1006 (9th Cir.  
27 2015); see also *Smith v. Berryhill*, 752 F. App'x 473, 475 (9th Cir. 2019) (unpublished),  
28 citing *Bayliss*, 427 F.3d at 1216–17. Further, "[w]here evidence is susceptible to more than

1 one rational interpretation, it is the ALJ's conclusion that must be upheld." *Shaibi*, 883 F.3d  
2 at 1108 (citing *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see also Fair v.*  
3 *Bowen*, 885 F.2d 597, 604 (9th Cir. 1989) (In Social Security cases, federal courts "are  
4 not triers of fact" and a court "may not substitute its judgment for that of the [ALJ].")

5 For the above reasons, the Court finds that the ALJ's RFC determination is  
6 supported by substantial evidence.

7 **V. CONCLUSION**

8 Having reviewed the Administrative Record as a whole, and weighing the evidence  
9 that supports and detracts from the Commissioner's conclusion, the Court finds the ALJ's  
10 decision was supported by substantial evidence and is free of legal error.

11 Accordingly, **IT IS THEREFORE ORDERED** that Wilson's motion to remand (ECF  
12 No. 17) is **DENIED**, and the Commissioner's cross-motion to affirm (ECF No. 18) is  
13 **GRANTED**;

14 **IT IS FURTHER ORDERED** that the Clerk **ENTER JUDGMENT** and **CLOSE THIS**  
15 **CASE**.

16 **DATED:** January 20, 2023

17   
18 **UNITED STATES MAGISTRATE JUDGE**  
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